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July 1, 2008

BY FAX AND REGULAR MAIL

Kelly G. Keenan, Esq.
Legal Counsel to the Governor
111 S. Capitol Ave,
Lansing, MI 48909

**Re; Petition and Charges against the
Honorable Kwame M. Kilpatrick**

Dear Mr. Keenan,

I write in response to Ms. McPhail's recent letter dated June 23, 2008 which, I believe, can only be described as a "rant." When you first wrote to counsel, Ms. McPhail, Mr. Thomas and myself on June 3, 2008, it was my understanding that you simply asked for comment on the procedural paradigm that you had proposed. My response on June 11 was offered in that spirit. I had assumed that substantive issues would await subsequent briefing.

I thus believe counsel's recent response to be inappropriate. While I have no intention of providing a detailed, point by point answer, I would appreciate the opportunity to briefly comment on several points:

First, counsel attempts to somehow claim that an "official resolution of the legislative body of the City of Detroit ... would have to have the votes of two thirds of the elected members of the Council." There is simply very little to say to such a bald assertion (without citation to either case or statute) other than to point to the applicable Charter provision, *Section 2-108*, that requires only a simple majority for this resolution, or any other, unless specifically provided in the Charter.¹ Needless to say, Ms. McPhail has failed to cite any applicable provision of the Charter, requiring more than a simple majority for such a vote because she cannot. Needless further to say, *Section 2-108* clearly applies and controls. A simple majority was and is sufficient.

Second, my client, the Detroit City Council, appreciates that there are pending criminal charges that make it more difficult for the Mayor to defend himself in these removal proceedings. Still this reality does not convert him into Ethel or Julius Rosenberg. Nor does it turn him into innocent prisoners, awaiting

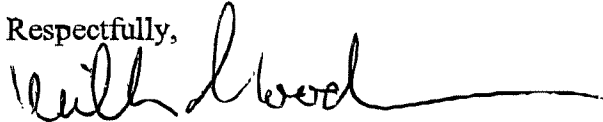
¹ Perhaps Ms. McPhail is, somehow, simply confused and therefore has attempted to revive an old claim made by the Corporation Counsel, John Johnson, in a letter dated May 5, 2008. He argued there that Council's vote was insufficient because a 2/3 majority was required to overcome a mayoral veto. As you know, I responded to this claim in detail on May 21, 2008 and sent your office a copy of that response. I again enclose a copy of that response with this letter (Attachment A) for everyone's benefit. I am confident that Ms. McPhail has long had a copy of that letter, as I copied her co-counsel Mr. Thomas (a courtesy that she has not seen fit to reciprocate). The point is that Ms. McPhail fails to address the points of law and factual assertions contained in my earlier letter or to even make the argument made by Mr. Johnson at the time. I believe those points to be persuasive. But should you or the Governor require further briefing, I will be please to follow up.

execution on death row in Illinois or elsewhere. No one is asking that he be sent to prison, executed or punished in any fashion. All that we ask is that he be removed from offices, not a criminal sanction. *Matter of Jenkins*, 437 Mich. 15 (1991). He can provide a robust defense without his own testimony. It is notable that both Presidents Clinton and Nixon faced possible criminal charges. Both were subjected to impeachment hearings. Neither testified; and neither complained about the inability to defend himself. Indeed, both found and exercised the ability to do so. Regardless, the point remains that there are times when it is necessary to protect the interests of the people, whether or not there are pending criminal charges. This is one of those times.

Third, despite her promise, at the beginning of her letter, not to address substantive issues, Ms. McPhail attempts to argue that the Council is routinely kept in the dark regarding the critical terms of settlements. There are several points that should be made at this time: 1) it is not true and I am prepared to prove it. This settlement was unique, in the centrality of the confidentiality agreement to it; b) Ms. McPhail appears to have actually conceded that the Council was indeed hoodwinked; and c) as I have pointed out to Ms. McPhail (in a letter dated May 23, 2008, copy to you) (Attachment B), she is likely to be called as a witness in the course of this matter. Nonetheless, she has decided to use her role as an attorney to commence her testimony, however not under oath. I consider it inappropriate.

Admittedly, these points are preliminary and I intend to address these matters and others fully when the Mayor's attorneys file motions that are lawyerly and that explicitly ask for whatever relief they seek (e.g. dismissal, stay of proceedings, a bill of particulars, etc.). Perhaps it is presumptuous for me to identify the kinds of motions they should file on their client's behalf, but it is borne out of impatience with counsel's approach to this litigation, to date.

Respectfully,



William Goodman
Special Counsel, Detroit City Council

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cc: Sharon McPhail, Esq.; James Thomas, Esq., Members of Council

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OF COURSE
GOODMAN KALAHAR, P.C.

May 21, 2008

John Johnson
Corporation Counsel for the City of Detroit
City of Detroit Law Department
660 Woodward Ave Ste 1650
Detroit, MI 48226

Re: Petition to Governor for Removal of Mayor Kwame M. Kilpatrick

Dear Mr. Johnson:

I am in receipt of your letter dated May 20, 2008, in regard to the Detroit City Council's Resolution to file a charge with the Governor, wherein you state, among other things:

"Section 4-119 contains ten (10) exceptions to the Mayor's power to veto actions taken by the City Council. However, the above-referenced proposed resolution does not fall within any one of these exceptions."

While it would have been helpful had you cited either reasons or authority the assertions in your letter, based on our independent research, your conclusion is simply incorrect in several critical respects:

First - there is a clear applicable provision among the exceptions¹ to the Mayor's veto power, set forth in Section 4-119, i.e. Section 4-109, the Council's broad power to "make any investigations into the affairs of the city and the conduct of any city agency." This would, by law, include all activities associated with such an investigation. Most certainly this is a "broad" power that clearly includes the undertaking of action based upon an investigation of Council, as was the investigation that included three days of public hearings which, ultimately, directly resulted in the passage of the Resolution in question to file a charge with the Governor. The passage of this Resolution was thus clearly an inherent part of the investigative process. See *Gibson v. Florida Legislative Investigation Committee*, 372 U.S. 539 (1963);²

¹ In fact there are more than the 10 exceptions that you have mentioned in your letter.

² In *Gibson*, the U.S. Supreme Court stated: "As this Court said in considering the propriety of the congressional inquiry challenged in *Watkins v. United States*, (cite omitted) ... 'The power * * * to conduct investigations is inherent in the legislative process. That power is broad. It encompasses inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes. It includes surveys of defects in our social, economic or political system for the purpose of enabling the Congress to remedy them.' ... And, more recently, it was declared that 'The scope of the power of inquiry, in short, is as penetrating and far-reaching as the potential power to enact and appropriate under the Constitution.' *Barenblatt v. United States*, (cite omitted)" *Id.*, 545.

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GOODMAN-KALAHAR

NO. 295 P. 3

John Johnson, City of Detroit Corporation Counsel
Re: Petition to Governor
May 21, 2008
Page 2

Second – as to the other cited exceptions to the Mayor's veto power, you ignore that this list of exceptions is merely a list of examples of "quasi-judicial acts of the city council." The Council's quasi-judicial function is intended to be broad and covered by traditional definitions of such activity. See, e.g., *Petz v. Secretary of State*, 125 Mich. App. 335 (1983)³, *People ex rel. Clardy v. Balch*, 268 Mich. 196 (1934). This Resolution falls within the definition of a "quasi-judicial act";

Third – from any policy perspective, it would be patently absurd to claim that the Charter intends to allow the Mayor to veto a Resolution that seeks his own involuntary ouster, through the processes of state law. Most certainly such a quasi-judicial and investigative action is, as it must be, outside the power of the Mayor to veto.

Also, you claim that the action of filing the petition and charges with the Governor is somehow invalid, in that the Resolution is not yet effective and therefore the action on the Resolution violates the City Charter. For the reasons set forth above, this is also absurd. Since this Resolution and consequent action is not subject to the Mayor's veto, of course, the Council was at liberty to act when it did.

Finally, of course, Council did act through Resolution in this matter as a way to best speak to its concerns. However, since MCL 168.327 does not require the action of a public body in order to mandate the Governor's action, but rather, only a writing supported by a sworn affidavit and since those requirements have been met, a veto by your client cannot stop the process that Council has now set in motion.

I am taking the opportunity to forward your letter and this response to Mr. Kelly Keenan, counsel to the Governor, so as to fully disclose to the Governor's office, all pertinent developments. I appreciate your continuing cooperation.

Very truly yours,

GOODMAN & HURWITZ, P.C.


William H. Goodman
Special Counsel to Detroit City Council

WHG:lmo
Enclosures

cc: Members of Detroit City Council
Kelly Keenan, Esq., Legal Counsel to the Governor
James Thomas, Esq., Legal Counsel to the Honorable Kwame M. Kilpatrick

³The Court of Appeals has defined "quasi-judicial" as, "(a) term applied to the action, discretion, etc., of public administrative officers, who are required to investigate facts, or ascertain the existence of facts, and draw conclusions from them, as a basis for their official action...." *Id.* fn 17

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OF COUNSEL
GOODMAN KALAHAR, P.C.

May 23, 2008

Sharon McPhail
General Counsel, City of Detroit
11th Floor
Coleman A. Young Municipal Center
Detroit, Michigan 48226

**Re: Petition of Detroit City Council, before the Honorable
Jennifer Granholm, Governor of the State of Michigan**


Dear Ms. McPhail,

I understand that you, along with Mr. James C. Thomas, have appeared on behalf of Mayor Kilpatrick in the above captioned matter. As you will recall, you were subpoenaed in the Detroit City Council Hearings, as a witness. We spoke about your appearance at that time and, for several reasons, my client decided to excuse your testimony.

There is, however, likelihood that you *will* be called as a witness in the proceedings before Governor Granholm. We intend to ask you questions about your knowledge or lack thereof, of the terms and conditions of the *Brown/Harris/Nelthrope* settlement. Given these considerations, you may wish to consult the Michigan Rules of Professional Conduct, Rule 3.7, and review your ability to participate in this action as counsel on behalf of the Mayor.

Feel free to call should you have any questions.

Sincerely,


William Goodman
Special Counsel, Detroit City Council

cc: Kelly Keenan, Esq.
James C. Thomas, Esq.

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